THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
THEADUS MARSHALL	)	OEA Matter No. 1601-0122-10
Employee	)	
	)	Date of Issuance: August 10, 2012
v.	)	
	)	Lois Hochhauser
DISTRICT OF COLUMBIA	)	Administrative Judge
DEPARTMENT OF HUMAN SERVICES	)	
Agency	)	
	)	

Ms. Theadus Marshall, Employee
Shermineh Jones, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Ms. Theadus Marshall, Employee, filed a petition for appeal with the Office of Employee Appeals (OEA) on November 2, 2009, appealing the decision of the District of Columbia Department of Human Services, to terminate her from her position as Staff Assistant. Employee identified herself as career service with a permanent appointment and referred to various grievances she had previously filed. The final Agency notice stated that the effective date of the removal was October 2, 2009. In its Answer, Agency contended that this Office lacked jurisdiction of this matter because Employee had resigned on September 23, 2009, which preceded the effective date of the removal. The matter was assigned to me on February 16, 2012.

A prehearing conference was scheduled for June 13, 2012. At this proceeding, the parties were offered the opportunity to address the jurisdictional issues raised in the submissions. The scheduling Order stated that the failure to appear at the proceeding could result in the imposition of sanctions, including the dismissal of the petition. The Order was sent to Employee, postage prepaid, at the address listed in the appeal as her mailing address. It was not returned to this Office, and is presumed to have been received by to Employee.

Employee did not appear at the prehearing conference and did not contact the undersigned or anyone at OEA to request an extension. Agency representative was present and was excused after approximately 45 minutes. On June 14, 2012, I issued an Order directing Employee to show good cause for her failure to appear at the prehearing conference. Employee responded in a timely manner. The record is now closed.

JURISDICTION

The jurisdiction of this Office was not established.

ISSUE

Should this matter be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Employee filed two documents following the June 14, 2012 Order. In her first submission, dated June 21, 2012, she explained that she resigned because at that time, she had many "personal tragedies" that were beyond her control, and that Agency "had become more than [she] could bear". She asserted that but for the tragedies and the needs of her family, she would have "fought with all perseverance". She attached a narrative with attachments detailing the problems she had experienced. In the second submission, dated June 28, 2012, which she stated was in response to the Order, she again noted problems she had experienced in her personal life and with Agency, and included attachments. She stated that she resigned "to take care of [her] mother and because of the micro-management styles of [Agency's] managers. " At the end of the submission, she stated, in part:

> I did not come to the scheduled hearing because I felt it would be a waste of time. I had no faith in DHS or your office for that matter and I wanted to put all of it behind me…It is now time for me to move on with my life if I can and to put the past pain and hurt that [Agency] has imposed upon me behind. I refuse to live another moment in the past…[P]lease note my statement for the record and let me go on as I …do not feel that a hearing at this time or in the near future is for the best…

Based on a careful review of the documents submitted by the parties, the Administrative Judge concludes that there are two grounds to dismiss this appeal. First, Employee resigned from her position before the effective date of her removal. Therefore, this Office would not have jurisdiction to hear the appeal. There is a presumption that resignations are voluntary. *Christie v. United States*, 518 F.2d 584 (Cl. Ct. 1975). This presumption can be rebutted if an employee establishes that the decision to resign was a result of coercion or erroneous information deliberately provided by Agency. This Office has not considered an employee's resignation to avoid termination or financial hardship to be sufficient to render the retirement or resignation as involuntary. *See, e.g., Charles M. Bagenstose v. D.C. Public Schools*, OEA Matter No. 2401-0224-96, *Opinion and Order on Petition for Review* (June 23, 2003),

D.C. Reg. _____ ( ). Employee did not raise any allegation or offer any argument that would challenge the voluntary nature of her resignation. To the contrary, she stated that she reached her decision to resign due to the need to care for her mother, other pressing family problems, and her dissatisfaction with the way she was treated by management. Although it appears that Employee had numerous personal problems as well as problems with management, these issues do not change the voluntary nature of her resignation.

The second basis for dismissing the petition is that Employee has stated that she does not want to pursue this appeal. However, she did not ask that her appeal be dismissed or withdrawn. Therefore, the basis for dismissal is Employee's failure to prosecute this matter. Employee did not attend the prehearing conference, despite the fact that she received the scheduling notice which provided the time, date and location of the proceeding. Her stated reason for not attending is that she does not want to pursue the appeal. The reason does not provide good cause for her failure to attend the scheduled proceeding. Pursuant to OEA Rule 622.3, 46 D.C. Reg. 9313 (1999), this Office has long maintained that a petition for appeal may be dismissed with prejudice when an employee fails to prosecute the appeal. The failure to attend a scheduled proceeding without good cause is a basis for concluding that Employee failed to prosecute her appeal.

Employee has the burden of proof on issues of jurisdiction, pursuant to OEA Rule 629.2, 46 D.C. Reg. 9317 (1999). Employee must meet this burden by a "preponderance of the evidence" which is defined in OEA Rule 629.1, as that "degree of relevant evidence, which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue". The Administrative Judge concludes that Employee did not meet the burden of proof in this matter on the issue of jurisdiction.

ORDER

It is hereby ORDERED that the petition for appeal is DISMISSED.[1]

_____
LOIS HOCHHAUSER, ESQ.
Administrative Judge

FOR THE OFFICE:

[1] On June 29, 2012, Agency filed a motion to dismiss, arguing that OEA lacked jurisdiction because of Employee's resignation. Since this appeal is being dismissed, the motion is dismissed as moot.